



Comptroller General  
of the United States  
Washington, D.C. 20548

Hasfurther  
145726

## Decision

**Matter of:** Standard Roofing USA, Inc.

**Date:** B-245776

**Date:** January 30, 1992

Herman M. Braude, Esq., Braude & Margulies, for the protester.  
Gregory H. Petkoff, Esq., and Robert L. Martin, Esq., Department of the Air Force, for the agency.  
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

An ostensible copy of a power of attorney, in which the surety appointed a named attorney-in-fact to obligate it on bonds and other matters, is unacceptable for the purposes of obligating the surety to the terms of the bidder's bid bond signed by the named attorney-in-fact where the names of the surety's officers witnessing the appointment and the name of the notary public notarizing the document are merely typewritten.

### DECISION

Standard Roofing USA, Inc. protests the award made to Saucier Brothers Roofing, Inc. under invitation for bids (IFB) No. F22600-91-B-0071, issued by Keesler Air Force Base, Mississippi, for the reroofing of the lower bay hangar roofs on five buildings. Standard contends that Saucier's bid should have been rejected as nonresponsive since the copy of the surety's power of attorney submitted with Saucier's bid bond does not unambiguously establish the attorney-in-fact's authorization to execute the bond on behalf of the surety, and thus there is doubt that the government could enforce the bond. Standard asserts that the firm, as the second low bidder, should receive the award.

We sustain the protest.

The IFB was issued on April 19, 1991. Bidders were required to submit lump-sum prices for a base bid item and for three option items. The IFB provided that the low bidder for the purposes of award would be the bidder offering the low

aggregate amount for the base bid item plus those option items providing the most features of the work within the funds determined by the government to be available before bid opening. Bidders were also required to submit bid bonds with their bids. As of the amended June 11 bid opening date, five bids had been received. Saucier submitted the low, aggregate price of \$485,554. Standard's aggregate price of \$534,275 was second low.

With its bid, Saucier submitted the required bid bond signed by Edna M. Lee as attorney-in-fact on behalf of the corporate surety. The copy of the power of attorney authorizing Edna M. Lee to bind the surety contained the typewritten names of the surety's two corporate officers who witnessed the appointment of the attorney-in-fact. The name of the notary public attesting to the execution of the power of attorney by the surety's two corporate officers was also typewritten rather than signed. On the reverse side of the copy, there was an attestation of an assistant secretary of the surety that the document was "a full, true and correct copy of the original power of attorney. . . ." This attestation was a stamped signature.

After the public bid opening and review of Saucier's bid, Standard submitted an agency-level protest that acceptance of Saucier's bid was improper. Standard argued that the copy of the surety's power of attorney, giving the attorney-in-fact on the bid bond authority to obligate the surety on the bid bond, was defective. On September 13, the contracting agency denied Standard's protest and made award to Saucier.

Standard maintains that, because the names of the two surety corporate officers and of the notary public were typewritten on the copy of the power of attorney, Saucier's bid was nonresponsive. Because the names were not signed by hand and because the attorney-in-fact's authority to bind the surety is thus not clear, Standard contends that the bid bond does not establish on its face that the surety is bound to meet its bond obligations and standard questions the government's ability to enforce the bond against the surety. Standard asserts that the validity of the actual power of attorney can only be established by extrinsic evidence and that to resort to such evidence would place the surety in the position of being able after bid opening to acknowledge or disavow its obligation as surety. As to the assistant secretary's certification that the copy of the power of attorney "is a full, true and correct copy of the original," Standard argues that it is not a true and correct copy because the true original contains hand-written signatures, and thus the agency could not rely on this certification knowing that it was not really a copy of the original.

The agency argues that the rigid rules applicable to bid bonds are not applicable to powers of attorney since these documents are general grants of authority intended to cover many situations. Because the power of attorney submitted with Saucier's bid is certified only as a copy, intended merely to illustrate the grant of authority, and not as the grant itself, the agency believes that it contains all the evidence necessary to enforce the bid bond. The agency believes that the signed attestation of the assistant secretary shows that the surety holds the document out as being a true copy of an act of the corporation and establishes that an original executed power of attorney exists. Thus, the agency believes it would be able to enforce the bid bond. The agency argues that although the government might need to resort to litigation to assert its rights, this situation is no different from any other situation in which a party fails or refuses to perform contract obligations.

The purpose of a bid bond is to give assurance that a successful bidder will execute all necessary documents, furnish further security as required, and will not withdraw its bid within the acceptance period. Accordingly, a bid bond is a material part of the bid, and a defective bond will render a bid nonresponsive. William V. Walsh Constr. Co., Inc., B-241257, Oct. 3, 1990, 90-2 CPD ¶ 270; Techno Eng'g and Constr. Ltd., B-243932, July 23, 1991, 91-2 CPD ¶ 87. To be acceptable as a bid guarantee, a bond must clearly demonstrate that the surety will be bound by its terms. Fred Winegar, B-243557, Aug. 1, 1991, 91-2 CPD ¶ 111. The bid documents must establish that the bond is enforceable against the surety should the bidder fail to meet its obligations. Where the power of attorney form accompanying the bond does not establish that the attorney-in-fact is authorized to bind the surety, the bid bond is defective and the bid nonresponsive. Techno Eng'g and Constr. Ltd., supra.

We think the corporate surety's power of attorney form does not establish unequivocally that the attorney-in-fact who signed the surety's bond was authorized to bind the surety. The copy submitted with the bid contains typewritten names of the corporate surety's officers, and there is nothing on the form itself or any other bidding document which establishes that the corporation considers typewritten names as sufficient to bind the corporation. The copy of the power of attorney submitted with Saucier's bid is effectively unsigned by the agents of the corporation and does not establish that the attorney-in-fact named in the bid bond submitted by Saucier had the authority to obligate the surety.

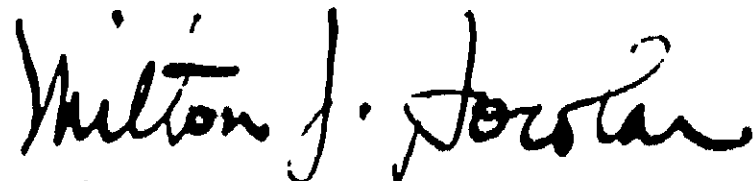
A power of attorney is to be strictly construed. See J.W. Bateson Co., Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472. We will not convert ambiguous aspects of bid bonds and powers of attorney into mere matters of form which can be explained away and waived. A.W. & Assocs., Inc., 69 Comp. Gen. 737 (1990), 90-2 CPD ¶ 254. Here, although the original valid power of attorney has been supplied after bid opening with the surety's corporate resolution which effectively authorizes copies of power of attorneys without manual signatures, such as the form submitted here, the determination as to whether a bid and the accompanying bond are acceptable must be based solely on the documents as they appear at the time of the bid opening, and a post-bid explanation may not be used to cure a defect. The King Co., Inc., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423.

Further, the only signature on the entire document is the stamped signature of the surety corporate secretary certifying that the copy is "a full, true and correct copy of the original power of attorney." We do not think this attestation cures what otherwise is a defective power of attorney. The use of a stamped signature on a bid or bid bond document, absent evidence submitted at the time of or prior to bid opening that such a mode of signature has been authorized and is binding, creates unacceptable uncertainty as to the enforceability of the bid or bond. Thus, when a bid or bid bond is submitted in such a manner, it must be rejected. See Hugo Key & Son, Inc., B-245227, Aug. 22, 1991, 91-2 CPD ¶ 189; Porter Contracting Co., Inc., B-228506; B-228865.2, Dec. 3, 1987, 87-2 CPD ¶ 547. Accordingly, the stamped signature of the surety's officer certifying the copy of the power of attorney without evidence that a stamped signature is authorized prior to bid opening cannot cure the fact that an unacceptable power of attorney was submitted with Saucier's bid and bid bond.

Since the copy of the power of attorney did not unequivocally establish the agent's authority to bind the surety, we find that Saucier's bid properly should have been rejected as nonresponsive. The protest is sustained.

The agency advises that performance of the Saucier contract has not begun. Therefore, we are by letter of today recommending to the Secretary of the Air Force that the agency terminate Saucier's contract for the convenience of the government and make award to Standard, if otherwise

appropriate. We also find Standard entitled to reimbursement of its costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d) (1991).

*for*   
Comptroller General  
of the United States